



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

December 5, 2017

Dr. Clayton M. Wilcox
Superintendent
Charlotte-Mecklenburg Schools
P.O. Box 30035
Charlotte, NC 28230

Re: OCR Complaint No. 11-16-1348
Letter of Findings

Dear Dr. Wilcox:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on May 18, 2016, against Charlotte-Mecklenburg Schools (the District). The Complainant¹ filed the complaint on behalf of a student

(b)(7)(C) (the Student) who was enrolled in (b)(7)(C) School (School A) at the beginning of the (b)(7)(C) school year.² The Complainant alleges that the District discriminated against the Student on the basis of her sex, by failing to promptly and equitably respond to the Student's report that another student at School A (the Respondent) sexually assaulted her on (b)(7)(C) (b)(7)(C) thereby subjecting her to a sexually hostile environment.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex, in any program or activity receiving Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

In reaching a determination, OCR reviewed documents submitted by the Complainant and the District; reviewed a personal statement from the Student; interviewed the Complainant, the Student's parents, and District faculty/staff; reviewed a video-recording; and listened to an audio-recording made by a friend of the Student's and provided by the Complainant. After carefully considering all of the information obtained during the investigation, OCR identified a violation of Title IX, which the District agreed to resolve through the enclosed Resolution

¹ The Complainant represents the Student and her parents. The Student's family had multiple attorneys representing them during the course of OCR's investigation; therefore, for the purposes of OCR's investigation, OCR will refer to all of the attorneys as "the Complainant."

(b)(7)(C) ² The Student was enrolled in (b)(7)(C) School (School B) beginning (b)(7)(C) through (b)(7)(C) the remainder of the 2015-2016 school year, and during the (b)(7)(C) school year. The Student graduated from (b)(7)(C) School B after the conclusion of the (b)(7)(C) school year.

other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, a recipient needs to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

In situations where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant⁴ of the right to file a criminal complaint with local law enforcement, and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Additionally, recipients must take immediate steps to protect the complainant and allow continued access to the recipient's programs and activities.

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator (or other designated responsive employee(s)), making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

There is no fixed timeframe under which a recipient must complete a Title IX investigation. OCR will evaluate a recipient's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each

⁴ The term "complainant" as used throughout this section refers to an individual who is the subject of any alleged sexual harassment, including sexual assault and sexual violence.

Agreement, pursuant to Section 303(b) of OCR's *Case Processing Manual*. OCR's findings and conclusions are discussed below.

Allegation

The Complainant alleged that the District, and specifically School A, discriminated against the Student on the basis of her sex, by failing to promptly and equitably respond to the Student's report that the Respondent sexually assaulted her during an incident on [REDACTED] (the Incident), thereby subjecting her to a sexually hostile environment. Specifically, the Complainant asserted that the District: (a) failed to conduct a prompt, thorough, and impartial investigation into the Incident; (b) failed to notify the Student of mental health services after the Incident; (c) failed to "take immediate steps to protect" the Student after the Incident, and to notify the Student of her options to avoid the Respondent, including in response to the Complainant's requests, made on or about [REDACTED], to issue "no trespass" and "no contact" orders against the Respondent; (d) failed to notify the Student of her "Title IX rights" after the Incident, meaning her right to file a formal complaint requesting an investigation or to pursue other options and her right to accommodations or interim measures; and (e) failed to notify the Student of the outcome of the investigation in writing.

The Complainant explained that the Respondent was an acquaintance and classmate of the Student at School A. During the Incident, the Complainant alleged that the Respondent forcibly removed the Student from campus against her will, by grabbing her arm and pulling her after him into the parking lot. In the parking lot, School A's Resource Officer (SRO) saw the Student and the Respondent, and the SRO yelled at the Student to ask where she was going. The Complainant asserted that while squeezing her arm, the Respondent was yelling at the Student that he "did not want to get into trouble," so she needed to cooperate with him; therefore, the Student was too scared to respond to the SRO. The Complainant stated that the Student "had the presence of mind" to text her friend (the Student Witness) and her mother, to inform them about what was happening and to "beg for someone to help her." The Complainant explained that despite the Student's efforts, the Respondent isolated the Student by forcing her off School A's campus, where he proceeded to force her to perform oral sex on him, thereby sexually assaulting her.

The Complainant further stated that the Student Witness reported the Incident to the SRO, but he failed to respond to the Incident. Thereafter, the Complainant stated that the Student's parents came to campus and took the Student to the hospital, where they called the Charlotte-Mecklenburg Police Department (the CMPD) to report the Incident as one of sexual assault; however, the CMPD refused to come to the hospital because they did not believe that a crime had taken place based upon the SRO's statement that the Student was attempting to "skip classes." Consequently, the Student's parents were forced to take the Student to the CMPD station to report the Incident. The Complainant asserted to OCR that the District suspended the Respondent for truancy as a result of leaving campus, but that the District neither investigated the Incident as one of sexual assault nor disciplined the Respondent for subjecting the Student to sexual assault.

(b)(7)(C) The Complainant stated that after becoming involved (as a legal representative for the Student and her parents), she contacted the District on [REDACTED] and requested that the District investigate the Incident as one of sexual assault/violence. The Complainant further stated that School A's Principal (the Principal) responded that same day, perhaps "inadvertently" to the Complainant instead of the District's Title IX Coordinator, and stated, "we did investigate this allegation." Thereafter, the Complainant stated that on [REDACTED] counsel for the District (Counsel) sent a letter to the Complainant and stated that she would respond once she "finished gathering and confirming the relevant factual information about the [District's] investigation into the [Incident]." The Complainant stated that on or about [REDACTED] d (b)(7)(C)

(b)(7)(C) [REDACTED] she requested that the District issue "no trespass" and "no contact" orders against the Respondent; however, in a response sent on [REDACTED] Counsel stated that the District did not have the authority to issue a no-contact order and did not address the request for a no-trespass order. The Complainant asserted that the District failed to substantively respond to the Student's/Complainant's complaints.

Legal Standards

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient of Federal financial assistance.

Sexual harassment that creates a hostile environment is a form of discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, regardless of the sex of the student. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.³ Sexual harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a hostile environment based on sex has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age of the alleged harasser and the subject of the harassment, the size of the school/recipient, the location of the incidents and the context in which they occurred; and other incidents at the school/recipient.

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any

³ From this point onwards, when OCR generally refers to "sexual harassment," such references may be assumed to include sexual assault and sexual violence.

administrator, as well as to the SRO (an employee of the CMPD); and the District would notify and consult with the CMPD regarding such complaints, as appropriate. The District's investigation process entailed interviewing the complainant, the respondent, other students, teachers, parents, and other witnesses; reviewing video surveillance, social media, text messages, emails, and other electronic communications; and consulting as a team of administrators prior to making a determination. The District also explained that at this time, it employed the preponderance standard of evidence when making a determination, and indicated that it typically notified student complainants and respondents or their parents orally, in person or via telephone, of any determination, and not in writing. The District also stated that during the course of any investigation, it provided students with interim measures, such as no-contact orders and classroom or other scheduling adjustments. The District subsequently designated a Title IX Coordinator in approximately January 2016, and revised its Title IX policies and grievance procedures in March 2016.

The Incident

In response to the Complainant's allegation and OCR's investigation, the District asserted to OCR that it conducted a prompt and thorough investigation of the Incident. The District provided OCR with all records maintained regarding its investigation, including but not limited to: a District incident report (the Incident Report) completed by the Assistant Principal at School A who responded to the Incident (the AP); surveillance footage on the day of the Incident; along with written statements from the SRO, the AP, and the Student Witness. The District also provided OCR with disciplinary records for the Student and the Respondent, as well as copies of internal and external correspondence. OCR also interviewed the AP and the Principal regarding the District's response to the Incident.

(b)(7)(C) According to the Incident Report, witness statements, and other documentation, while directing car traffic at approximately 7:00 a.m. on [REDACTED] the SRO saw the Student walking with the Respondent downhill and away from the rear of School A's campus. The SRO reported that he shouted to the Student to return to School A or he would call her mother; he explained that he immediately recognized the Student but not the Respondent. The SRO witnessed the Student and the Respondent turn as if they would return to the campus, but they continued to walk off campus and into the woods. The SRO indicated that he did not witness the Respondent grabbing or otherwise forcibly removing the Student from campus. Moreover, OCR reviewed a surveillance footage, in the form of a video-recording, of the Student and the Respondent exiting School A's building at approximately 6:59 a.m.; the footage is brief and does not show whether the Student and the Respondent left the campus. Although limited in scope, the available footage does not indicate that the Respondent forcibly removed the Student from campus by grabbing her or visibly yelling at her, as the Complainant alleged.⁵ Rather, the Student appeared to be walking freely with the Respondent while other students passed by, and parents in their cars dropped-off students near an entrance of the school building.

Shortly thereafter, documentation indicates that the Student Witness approached the SRO and explained that she had received a text message from the Student asking for help. The Complainant provided an audio-recording of a conversation between the Student Witness and the

⁵ The video-recording did not include audio.

mother denied that the AP made the request; she informed OCR that although the AP called the hospital and spoke briefly with her, he did not request to speak to the Student.⁶ The Incident Report indicates that the District was aware that the Student was at the hospital and had requested a “rape kit.” Further, the District stated that it did not initiate any further attempts to interview the Student, based upon an email the Student’s mother sent to the Principal on

(b)(7)(C) [redacted] as discussed below.

(b)(7)(C) In addition, on [redacted] the AP’s and the CMPD’s investigations consisted of speaking with the Respondent. The Incident Report indicates that the Respondent informed the AP and the CMPD that the Student had performed oral sex on him in the woods, and he provided additional details regarding the sexual act. The AP and the CMPD also reviewed text messages on the Respondent’s phone, including those between him and the Student, beginning on or about

(b)(7)(C) [redacted] however, the District did not retain copies of the text messages. The Incident Report stated that the text messages indicated that the Student and the Respondent were setting up a time and date to “hook up,” and the Student stated that she did not want to “skip” today, presumably referring to her classes.⁷ The AP also contacted other students identified on the text messages to find out if they had relevant information; and reviewed video footage from that morning. The AP informed OCR that the conversations he had with the other students were brief because he learned that none attended School A or had any information about the event. The AP did not retain notes or other documentation from the conversations indicating how many students he contacted. The AP also immediately imposed a 10-day out-of-school suspension (OSS) on the Respondent for a “Sexual Offense,” pending the completion of the investigation.⁸

Further, during his investigation, the AP emailed another assistant principal at School A, who was responsible for students’ class schedules, and asked that in instances wherein the Respondent and the Student were in the same class or the same lunch period, that the Respondent be moved to a different class and lunch period. School A staff also took steps to ensure that the Student and the Respondent would not be in the same wing of the school at the same time, so that any contact between them could be reduced. The AP also informed OCR that he offered the Student counseling services; however, the Complainant disputed the AP’s assertion. The District asserted that if the Student had returned to School A, it was prepared to implement additional interim measures. However, as stated above, the Student never returned to School A after the Incident.

As previously stated, three days later on the evening on Friday, [redacted] the Student’s mother sent an email to the Principal and stated that her only concern at that point was regarding the Student’s health, not the outcome of School A’s investigation. She further stated, “We will not discuss any specifics about the events that took place on Tuesday [redacted] or do not want to be informed of any outcomes” of School A’s investigation. In her email, the Student’s mother also explained that the Student was receiving medical treatment in relation to

⁶ The AP recalled that he also called the Student’s mother on [redacted] to ask how the Student was doing.

⁷ OCR found no information to indicate that the SRO told the CMPD that the Student was “skipping class” or any other statement to that effect. Rather, as stated above, it is possible that the CMPD obtained this information from the Respondent’s text messages.

⁸ OCR’s review of the Respondent’s disciplinary record indicated that he had not been previously referred or disciplined for any other sexual offense or infraction.

(b)(7)(C) Subsequently, in a letter sent on [REDACTED], the Complainant (acting on behalf of the Student and her parents) requested that the District investigate the Incident, as stated above. In a letter sent on [REDACTED], Counsel stated that the District would respond after she inquired about the investigation of the Incident. On [REDACTED] the Complainant asked that the District issue no-contact orders between the Student and the Respondent, and requested an update regarding the investigation. On [REDACTED] Counsel responded that the District did not have authority to issue a no-contact order and indicated that the Complainant should consult with School B's Principal regarding any concerns that the Respondent may trespass on School B's campus. On [REDACTED] Counsel responded again by letter, and explained that she was limited in her ability to respond to the Complainant's concerns regarding the Incident. Counsel further stated, "The Family Educational Rights and Privacy Act ("FERPA") protects students' education records from disclosure to third parties. However, I have looked into this matter and confirmed that CMS conducted a prompt and thorough investigation into the [I]ncident."¹⁰

Analysis

As previously stated, the Complainant alleged that the District discriminated against the Student on the basis of her sex, by failing to promptly and equitably respond to the Student's report that the Respondent sexually assaulted her during the Incident on [REDACTED] thereby (b)(7)(C) subjecting her to a sexually hostile environment. Specifically, the Complainant asserted that the District: (a) failed to conduct a prompt, thorough, and impartial investigation into the Incident; (b) failed to notify the Student of mental health services after the Incident; (c) failed to "take immediate steps to protect" the Student after the Incident, and to notify the Student of her options to avoid the Respondent, including in response to the Complainant's requests, made on or about [REDACTED] to issue "no trespass" and "no contact" orders against the Respondent; (d) failed to notify the Student of her "Title IX rights" after the Incident; and (e) failed to notify the Student of the outcome of the investigation in writing.

Based on the foregoing, OCR determined that although the District conducted a prompt, thorough, and impartial investigation of the Incident on [REDACTED] it failed to provide (b)(7)(C) adequate notice to both parties of the outcome of the investigation.

With respect to Part (a) of the Complainant's allegation, in which she alleged that the District failed to conduct a prompt, thorough, and impartial investigation into the Incident, OCR determined that in response to receiving notice that the Incident included a possible sexual (b)(7)(C) assault on [REDACTED] the District/School A responded to the Incident in a prompt, thorough, and impartial manner, by: interviewing the Respondent and all available witnesses, including the Student Witness; and reviewing all available documentation, including text messages and surveillance footage. Although School A did not interview the Student as part of

¹⁰ Counsel for the District ceased working for the District shortly after OCR opened the instant OCR complaint. Therefore, OCR was unable to ascertain whether Counsel sought to ensure any coordination between School A and School B regarding the Complainant's concerns that the Respondent may trespass on School B's campus; or to account for the approximately two and a half month timeframe that it took for Counsel to respond to the Complainant's letter dated [REDACTED]. However, the Complainant did not assert that the Respondent trespassed on School B's campus, or that the Student had any further interactions with the Respondent once she began attending School B.

With respect to Part (c) of the Complainant's allegation, the Complainant alleged that the District failed to "take immediate steps to protect" the Student after the Incident, and to notify the Student of her options to avoid the Respondent, including in response to the Complainant's requests, made on or about [REDACTED] to issue "no trespass" and "no contact" orders against the Respondent. OCR determined that the District implemented appropriate interim measures to protect the Student immediately after the Incident in [REDACTED] such as ensuring that the Student and the Respondent would be separated during classes and the lunch period in School A, and imposing an immediate 10-day OSS on the Respondent. The District also promptly granted the request made by the Student's parents to transfer the Student to a different school, and the Student transferred on [REDACTED] approximately two weeks after the incident occurred.¹³

To the extent that the Complainant is alleging that the District should have issued "no trespass" or "no contact" orders against the Respondent beginning in [REDACTED] through the end of the [REDACTED] school year, OCR determined that the District had already completed a prompt and thorough investigation and determined the Incident was consensual; and, the Complainant had not reported that the Student had any further interactions or contact with the Respondent that would warrant the issuance of a no-contact order. Therefore, OCR determined that the District was under no obligation under Title IX to issue no contact orders at that time. Accordingly, OCR will take no further action regarding this portion of the Complainant's allegation.

In Part (d) of the Complainant's allegation, she alleged that the District failed to notify the Student of her "Title IX rights" after the Incident, including her right to file a formal complaint or to pursue other options, and interim measures/accommodations. OCR discussed the issue of interim measures in Part (c) above. OCR also addressed above the fact that the District did not have access to the Student immediately following the Incident, and the District did not have an opportunity to notify the Student of her options given the Student's mother's request that the District no longer contact her family regarding its investigation, of which she was aware. The District nonetheless acted promptly on the report that the Student had been sexually assaulted, including by notifying the CMPD. Accordingly, OCR determined that the Student was not denied her Title IX rights as alleged, and OCR will take no further action regarding this portion of the Complainant's allegation.

With respect to Part (e) of the of the Complainant's allegation, in which she alleged that the District failed to notify the Student of the outcome of the investigation in writing, OCR determined that there was sufficient evidence to substantiate the Complainant's allegation. OCR determined that the District did not provide adequate written notice of the outcome to the Student and her parents, in violation of Title IX. Specifically, when the Complainant requested that the District investigate the matter on [REDACTED] the District's response failed to comply with the requirements of Title IX. The District incorrectly asserted that FERPA prevented it from sharing any information about the outcome of the investigation. To the contrary, FERPA permits

¹³ Further, despite the Student leaving School A, the Student's parents also informed OCR that they were aware of some of the interim measures provided by the District, as they received information from the Student Witness's family that after returning from his suspension, the Respondent had been moved out of the Student's classroom and into the Student Witness's classroom.

case. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a recipient should provide written notice to the responding party of the allegations constituting a potential violation of the school's Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy.

For Title IX purposes, a recipient should also provide written notice of the outcome of disciplinary proceedings to the complainant and the responding party concurrently. The content of the notice may vary depending on the underlying allegations, the institution, and the age of the students. This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions. For proceedings in elementary and secondary schools, the school should inform the complainant whether it found that the alleged conduct occurred, any individual remedies offered to the complainant or any sanctions imposed on the responding party that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist. In an elementary or secondary school, the written notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

Investigation

The District's Title IX Practices

The District informed OCR that at the time of the Incident, it did not have a designated Title IX Coordinator or anyone specifically designated or responsible for investigating or responding to complaints/reports alleging discrimination on the basis of sex, including sexual harassment and sexual assault/violence. During this timeframe, the District provided information indicating that with respect to School A, the Principal was responsible for investigating or responding to such complaints. However, the Principal had the capacity to delegate his responsibility to any

SRO. In the recording, the SRO asked the Student Witness why she (the Student) did not come to him for assistance, and the Student Witness responded, “because he just took her.” Documentation indicates that the SRO notified the AP at approximately 7:15 a.m., that he had received information from the Student Witness that the Student had been “kidnapped.”

The SRO stated that he received a telephone call from the Student’s father, whom he notified of the situation. The SRO also instructed the Student Witness to direct the Student to provide her location, and the Student provided the name of a street where she was walking. The SRO stated that he contacted the AP, and they drove to the street identified in his patrol car. The SRO and the AP saw the Student and the Respondent and asked them to get into the car; the Student sat in the front seat with the SRO, and the Respondent sat in the back seat with the AP.

The SRO and the AP stated that by the time they returned to School A, the Student’s father had arrived and was speaking with the Student’s mother on the phone; this is contrary to the information provided by the Complainant, who asserted that both parents were at School A. The AP stated that he spoke to the Student’s mother on the phone, and she asserted that the Student was raped and told him, “this is not how you treat a rape victim.” The AP explained to OCR, consistent with the SRO’s written statement, that School A initially had no indication that this was an alleged sexual assault until speaking with the Student’s mother, as neither the Student, the Student Witness, nor the Respondent reported a sexual assault. The SRO and the AP noted that the area was flooded and muddy due to rain, but neither the Student nor the Respondent had mud on them, except for their shoes. However, the Student’s parents later asserted to OCR that when they later saw the Student, she was disheveled and had mud and leaves in her hair.

Thereafter, the Student’s father left School A with the Student, explaining to the SRO and the AP that he was taking her to the hospital. The SRO stated that based on the Student’s mother’s statement, and prior to the Student leaving School A’s campus with her father, he had called the CMPD’s Sexual Assault Unit, which sent a detective to School A; however, the detective arrived after the Student left. The Student never returned to School A after the Incident. On November 18, 2015, at the request of the Student’s mother and due to the Incident, the Student transferred out of School A to South Mecklenburg High School (School B), as discussed in additional detail below.

The District’s/School A’s Investigation of the Incident

In response to the Student’s mother’s statement that the Student had been sexually assaulted, School A investigated the Incident as one involving a possible sexual assault. The Principal explained to OCR that the CMPD and School A conducted concurrent but independent investigations.

District staff stated that the AP spent the remainder of the day on [redacted] responding (b)(7)(C) to and investigating the Incident, while keeping the Principal abreast of the investigation. Because the Student’s father removed the Student from School A soon after they arrived back to School A’s campus, neither the CMPD nor the AP had an opportunity to interview or speak with (b)(7)(C) the Student about the Incident on [redacted]. The AP told OCR that he asked the Student’s mother by phone if he could speak to the Student on [redacted]. The Student’s (b)(7)(C)

the Incident.⁹ On that evening, the Principal responded by email and stated that he understood. OCR also reviewed email correspondence between District personnel on the following Monday, (b)(7)(C), wherein District personnel acknowledged collecting work for the Student to complete.

The AP and School A completed the investigation of the Incident the following Monday on (b)(7)(C). Both the Principal and the AP shared with OCR that they would have preferred to speak with the Student prior to completing the investigation, but they believed that the Student's mother's email was definitive and that there would not be an opportunity forthcoming to do so. Based on the evidence it had obtained, the District concluded that the Incident was one of mutual sexual contact between the Student and the Respondent, and not one of sexual assault or other sexual misconduct. The AP explained that the investigation revealed that although an act of oral sex took place, the investigation did not demonstrate that the Student was forced into the act; rather, the act appeared to be a consensual one. The AP was unable to explain or describe to OCR which standard of evidence he used in making his determination. At that time, School A eliminated the remainder of the Respondent's 10-day OSS for the Incident, such that he served a 4-day OSS during the pendency of the investigation. The Incident had initially been coded in the PowerSchool program as a "Sexual Offense"; however, on (b)(7)(C), the District changed the coding to "Mutual Sexual Contact."

Thereafter, the AP notified the parents of the Respondent via the telephone of the outcome, but did not provide them with written notice of the outcome; the AP also did not recall or retain any documentation regarding the specific date on which he provided the Respondent's parents with notice of the outcome. School A did not notify the Student, her parents, or the Complainant of the investigation outcome at the time, in any form, written or otherwise. The District explained that this was done out of respect for the family's wishes, based on the email that the Student's mother sent to the Principal on (b)(7)(C) in which she stated that her family did not want to be informed of any investigation outcome.

The Principal explained that the CMPD made its initial determination prior to (b)(7)(C), however, School A learned on (b)(7)(C) that the CMPD was reopening the investigation of the Incident in response to a complaint from the Student's parents. As a result, School A briefly delayed in issuing its determination in order to see if any additional information from the CMPD would be forthcoming. Ultimately, on (b)(7)(C) School A concluded that it had to make a determination based on the information currently available. Although the District told OCR that it did not receive a final report from the CMPD, it shared with OCR that, to its knowledge, the CMPD ultimately made the same determination.

On (b)(7)(C) the Student's mother subsequently emailed the Principal and informed him that they had submitted a request to transfer the Student from School A to a different school; the Principal responded that he would see what he could do to facilitate the transfer request and, in the meantime, he would ensure that School A counselors would provide her with homework/missed work for the Student. As previously stated, the Student transferred to School

⁹ The Complainant stated that the Student had been diagnosed with Post-Traumatic Stress Disorder and Depression.

(b)(7)(C) its investigation, OCR determined that given the email that the Student's mother sent to the Principal on [REDACTED] it was not unreasonable for School A to assume that it would not have an opportunity to speak with the Student. The Complainant later asserted to OCR that the email from the Student's mother did not necessarily represent the wishes of the Student. In this instance, OCR notes that it would not have been appropriate for the District to contact the Student directly regarding the investigation outcome, particularly given her mother's email and the fact that she was the Student's parent/guardian. In addition, although the AP was unable to identify the standard of evidence used in reaching a determination regarding the Incident, it appeared that the AP used the preponderance standard. Further, OCR found no evidence to indicate that the investigation was biased or not impartial; and OCR did not otherwise identify any concerns regarding this portion of the Complainant's allegation. Accordingly, OCR will take no further action regarding this portion of the Complainant's allegation.¹¹

Regarding Part (b) of the Complainant's allegation, the Complainant alleged that the District failed to notify the Student of mental health services after the Incident on [REDACTED] (b)(7)(C) With respect to the timeframe at issue, OCR determined that because the District found that the Incident was one of mutual sexual contact, the District had no obligation to provide counseling services to the Student after [REDACTED] the date it reached its determination.

(b)(7)(C) OCR found insufficient evidence of a violation of Title IX regarding this issue. Specifically, OCR determined that there was a dispute of fact as to whether or not School A offered the Student counseling services following the Incident on [REDACTED] The AP informed (b)(7)(C) OCR that he offered the Student counseling services after the Incident, although he did not retain documentation of such an offer, and the Complainant maintains that the District did not offer these services. Further, the Student did not return to School A following the Incident, and as discussed, School A never had the opportunity to talk with the Student, in person or remotely.¹² As discussed below, OCR determined that the District did implement other appropriate interim measures intended to support and keep the Student safe during the pendency of the investigation. Therefore, OCR concludes that under these circumstances, including the timeframe at issue, there is insufficient evidence to substantiate that the District failed to notify the Student of mental health services, and OCR determined that the District otherwise fulfilled its responsibility to provide appropriate interim measures to the Student. Accordingly, OCR will take no further action regarding this portion of the Complainant's allegation.

¹¹ The Student's parents expressed dissatisfaction to OCR with the fact that School A completed its investigation of the Incident prior to speaking to the Student. The Student's parents explained to OCR that when the Student's mother sent her email to the Principal on [REDACTED] they believed that School A had already completed its investigation based on their communications with the SRO. However, based on testimony of School A's Principal and the AP, as well as PowerSchool records and email correspondence indicating that the Incident was not changed to mutual sexual contact until [REDACTED] (b)(7)(C) OCR presumes the parents may have confused the initial outcome of the CMPD's investigation [REDACTED] (b)(7)(C) or earlier) with the outcome of School A's investigation [REDACTED] (b)(7)(C)

¹² Moreover, OCR found no evidence to indicate that the Complainant or the Student's parents requested counseling services from the District or otherwise indicated that the Student was lacking such services; in fact, in the email the Student's mother sent to District staff on [REDACTED] (b)(7)(C) she explained that the Student was receiving medical treatment for PTSD, which likely would include counseling services.

the disclosure of information necessary to comply with Title IX.¹⁴ Moreover, OCR also determined that the District failed to provide the Respondent and his parents with written notice of the outcome, in violation of Title IX, even though it asserted that oral notice was provided on

(b)(7)(C) [redacted] The District has agreed to address these violations through the enclosed Resolution Agreement, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

Further, during the course of its investigation, OCR identified additional concerns regarding the District's response to the Incident, including its failure to adequately document the investigation¹⁵, its failure to identify the standard of evidence used in making a determination, and the lack of any involvement or oversight from the District's/School A's Title IX Coordinator. These concerns are being addressed through a prior Resolution Agreement the District signed with respect to OCR Complaint Number 11-13-5002, which entailed a class-wide Title IX investigation regarding sexual harassment and sexual assault/violence. The

(b)(7)(C) investigation of the Incident on [redacted] that is the subject of the instant complaint was completed prior to the District making relevant changes to its process pursuant to the Resolution Agreement OCR obtained in OCR Complaint Number 11-13-5002, which resolved on November 19, 2015, including revising the District's Title IX grievance procedures; redefining the responsibilities of the Title IX Coordinator; training staff on the new procedures and the District's responsibilities under Title IX, including the roles and responsibilities of the Title IX Coordinator; and developing a record-keeping system for recording investigations and tracking complaints.

Conclusion

On November 30, 2017, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified area of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified area of noncompliance. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that during the monitoring of this Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. Part 106, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close this complaint.

As stated in the Agreement entered into the by the District on November 30, 2017, the District understands and acknowledges that OCR may initiate administrative enforcement or judicial

¹⁴ OCR notes that the District should have provided the Student and her parents with written notice of the outcome after it completed its investigation on [redacted] However, OCR considered the Student's mother's request, in her email sent on [redacted] that the District not notify the family of the investigation outcome, and determined that the District's decision to respect the family's wishes was appropriate.

¹⁵ For example, the Division failed to retain documentation of all of the steps taken by the AP to investigate the Incident, including the information he obtained from reviewing the content of the Respondent's cell phone, as well as from the other possible student witnesses. The AP retained some handwritten notes pertaining to the investigation, including reviewing the video footage, but not all.

RESOLUTION AGREEMENT
Charlotte-Mecklenburg Schools
OCR Case No. 11-16-1348

Without admitting to any violation of law, Charlotte-Mecklenburg Schools (the District) agrees to implement this Resolution Agreement (the Agreement) in the above-referenced complaint investigated by the U.S. Department of Education, Office for Civil Rights (OCR) under Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106. The Agreement includes terms that resolve allegations for which OCR identified violations under Section 303(b) of OCR's *Case Processing Manual* (CPM).

Action Item: Written Notice of the Outcome

Within 60 days of the effective date of this Agreement, and with respect to the District's investigation of a report that another student (the Respondent) sexually assaulted the Student during an incident on _____ the District will provide written notice of the investigation outcome to (a) the Complainant, and (b) to the parents/guardians of the Respondent.

Reporting Requirements:

- a. Within 15 days of the effective date of this Agreement, the District will provide OCR with draft written notices to be provided to the Complainant and to the parents/guardians of the Respondent, in accordance with Action Item A.
- b. Within 10 days of OCR's review and approval, the District will provide OCR with dated copies of the written notices provided to the Complainant and to the parents/guardians of the Respondent, in accordance with Action Item A.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that during the monitoring of this Agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. Part 106, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Sara Clash-Drexler, the OCR attorney assigned to this complaint, at 202-453-5906 or Sara.Clash-Drexler@ed.gov.

(b)(7)(C)

Sincerely,

Letisha Morgan
Team Leader
Office for Civil Rights
District of Columbia Office

Enclosure

cc:

(b)(6)

11/30/2017
Date

[Redacted]

(b)(7)(C)

Dr. Clayton M. Wilcox
Superintendent (or designee)
Charlotte-Mecklenburg Schools



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310
DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

May 15, 2018

Paradise Valley Unified District
Attn: Superintendent Dr. James Lee
15002 N 32nd Street
Phoenix, AZ 85032

Via email only to: jimlee@pvschools.net

Re: Paradise Valley School District
OCR Case Number: 08-16-1030

Dear Dr. Lee:

The U.S. Department of Education, Office for Civil Rights (OCR) received the above referenced complaint filed against the Paradise Valley School District (District) alleging discrimination on the basis of sex. Specifically, the Complainant alleged the District failed to appropriately respond to a report of sexual assault of her daughter (Student) that occurred on [REDACTED]. The Complainant also alleged the District retaliated against her for complaining about how the District responded to the assault by sending a private investigator to observe and follow her actions. (b)(7)(C)

The Complainant had filed a lawsuit against the District (CV 2015-013038) regarding the [REDACTED] alleged sexual assault. On April 18, 2018, OCR obtained a copy of a signed settlement and release of all claims between the Complaint and the District. A review of the document indicates that the Complainant agreed to release and discharge with prejudice the District from all claims contained in OCR case number 08-16-1030. Additionally, on April 24, 2018, counsel for the District provided OCR with a copy of a signed order dismissing with prejudice her lawsuit against the District. (b)(7)(C)

OCR's Case Processing Manual provides that OCR will close a complaint when OCR obtains credible information indicating that the allegations raised by the complainant are no longer appropriate for investigation. Therefore, we are closing the above referenced complaint as of the date of this letter.

If you have any questions, please contact Michael Germano, Attorney and primary contact for this case, at (303) 844-2559 or by email at Michael.germano@ed.gov, or me at (303) 844-5927 or by email at tom.rock@ed.gov.

Sincerely,

(b)(7)(C)

Thomas M. Rock
Supervisory General Attorney

cc via email: Bradley Jardine (BJardine@JBHHLaw.com)